

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION**

Cesar Garcia-Delgado,	)	Civil Action No. 9:19-cv-723-RMG
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Bureau of Prisons,	)	
	)	
Respondent.	)	
	)	

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Before the Court is the Report and Recommendation (“R & R”) of the Magistrate Judge (Dkt. No. 23) recommending the Court dismiss Petitioner’s Petition. For the reasons set forth below, the Court adopts the R & R, and the Petition is dismissed without prejudice.

**I. Background**

Petitioner brought this action for a Petition for a Writ of Mandamus under 28 U.S.C. § 1361. (Dkt. No. 1.) On March 15, 2019, the Magistrate Judge issued a Proper Form Order, instructing Petitioner to bring his Petition into proper form within twenty-one (21) days, and advising him that failure to do so may subject his Petition to dismissal for failure to prosecute and failure to comply with a Court order. (Dkt. No. 6.) Plaintiff failed to comply with the Order. On April 12, 2019, the Magistrate Judge issued a R & R recommending the case be dismissed without prejudice but permitted Petitioner to bring his case into proper form within the time for Objections. (Dkt. No. 9.) The time for filing Objections, including three days for service by mail, expired on April 29, 2019, and the Petitioner has not filed Objections or otherwise contacted the Court.

**II. Legal Standard**

The Magistrate Judge makes only a recommendation to this Court that has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court may “accept, reject, or modify, in whole or in

part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court must make a *de novo* determination of those portions of the R & R to which Plaintiff specifically objects. Fed. R. Civ. P. 72(b)(2). Where Plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted). “Moreover, in the absence of specific objections to the R & R, the Court need not give any explanation for adopting the recommendation.” *Wilson v. S.C. Dept of Corr.*, No. 9:14-CV-4365-RMG, 2015 WL 1124701, at \*1 (D.S.C. Mar. 12, 2015). *See also Camby v. Davis*, 718 F.2d 198, 200 (4th Cir.1983). Plaintiff did not file objections, and the R & R is reviewed for clear error.

### **III. Discussion**

Plaintiff has not responded to the Proper Form Order or otherwise contacted the Court since filing his Petition. Plaintiff’s failure to respond to the Order, which warned him that the case may be dismissed if he did not bring his Petition into proper form, subjects the Petition to dismissal under Rule 41. *See Fed. R. Civ. P. 41(b)* (district courts may dismiss an action if a plaintiff fails to prosecute or to comply with an order of the court); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (dismissal appropriate when accompanied by a warning).

### **IV. Conclusion**

For the foregoing reasons, the Court **ADOPTS** the R & R of the Magistrate Judge (Dkt. No. 9) and the Petition is **DISMISSED WITHOUT PREJUDICE**.

**AND IT IS SO ORDERED.**



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Richard Mark Gergel  
United States District Court Judge

May C, 2019  
Charleston, South Carolina